APPENDIX.

(Filed Jan. 15, 1963, Carl W. Reuss, Clerk)

No. 14955.

United States Court of Appeals
for the Sixth Circuit.

United States of America, Plaintiff-Appellee, v. Joseph W. Hart and J. Carl Russell, Defendants-Appellants.	Appeal from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided January 15, 1963.

Before: Cecil, Chief Judge, Miller, Circuit Judge, and Boyd, District Judge.

Boyd, District Judge. The government sued the defendants-appellants herein for $83,900.63 plus interest, the balance allegedly owing on a loan contracted with two certain banking institutions, the payment of which the appellants had unconditionally guaranteed. The claim herein against the appellants had been assigned by the aforesaid banks to the government after the latter had paid on its own guaranty of 90% of the obligation. The government's guaranty was executed pursuant to Executive Order 9112, issued under authority of the First War Powers Act of 1941. The only issue found to be deserving of discussion on this appeal is whether in this non-jury case the District Court erred in relying on certain evidence concerning proof of

value of real property in rendering judgment against the appellants. The issue arises as incidental to the main question of whether the sale of said real property by the government's assignors, the banks, was a good faith transaction.

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Hart, et al. v. Fed. Res. Bk. of Atlanta No. 17170.

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Bank of Atlanta, the appellee herein. The United States then brought an action in the District Court against Hart and Russell on their guarantees. The court granted judgment to the United States, 215 F. Supp. 35, and this Court affirmed, 312 F. 2d 127. The appellants then brought this action in the District Court against the Federal Reserve Bank.

The cause of action centers on two basic claims, one, that the appellants were induced to sign an agreement under date of April 6, 1944, through false representations made by the banks and, two, that the Federal Reserve Bank mismanaged the collateral security and caused the security to be sold for less than its actual value to the damage of the appellants.

District Judge William E. Miller granted summary judgment to the Federal Reserve Bank and this appeal followed. Judge Miller wrote an excellent opinion in which he held that all but one of the specific issues raised by the complaint had been decided in the prior case and that the doctrine of collateral estoppel was applicable. He held that the claim that the Federal Reserve Bank prevented sales to individual home owners was vague and general and insufficient to state a claim against the Federal Reserve Bank which would not be precluded under the doctrine of sovereign immuni[illegible]. The facts are fully stated in the opinion of Judge M[illegible]r. We agree with the opinion of Judge Miller in its en[illegible]ty.

After the motion for summary judgment was filed, counsel for the appellants moved to amend the complaint by alleging in effect that the Federal Reserve Bank was without authority as fiscal agent of the United States to guarantee the payment to the banks of 90 percent of any deficiency and to act as it did in relation to the transaction. The district judge allowed the amendment but did not specifically comment on it in his opinion.

Under this amendment, appellants challenge the following statement in the opinion of Judge Miller:

> "Since the Reserve Bank was merely a fiscal agent of the War Department under the First War Powers Act of 1941, it would be clothed with the immunity of the sovereign in carrying out its proper functions in complying with its statutory obligation as an insurer of 90% of the Hart and Russell indebtedness, and in receiving and enforcing all rights to collateral security after payment."

It is provided in paragraph 3 of Executive Order No. 9112 under the First War Powers Act of 1941 that,

> "Any Federal Reserve Bank * * * is hereby authorized to act, as agent of the War Department * * * in carrying out any of the provisions of this executive order, and the Secretary of the Treasury is hereby directed to designate each Federal Reserve Bank to act as fiscal agent of the United States pursuant to the provisions of section 15 of the Federal Reserve Act in carrying out any authority granted to it by or pursuant to this executive order. * * * In taking any action under any designation or authority given by or pursuant to this paragraph no Federal Reserve Bank shall have any responsibility or accountability except as agent of the War Department * * *"

Section 7 of 56 Stat. 351, enacted June 11, 1942, ratified the grant of authority given the War Department under this executive order.

We conclude that the Federal Reserve Bank of Atlanta was authorized to take such action as it did and of which complaint is made herein and that there is no error in the above quoted clause of the district judge's opinion.

Judge Miller did not reach the government's claim that the action was barred by the statute of limitations, nor do we.

The judgment of the District Court is affirmed upon the opinion of Judge Miller. (Joseph W. Hart et al. v. Federal Reserve Bank of Atlanta, ... F. Supp. ....)

United States of America
vs.
Joseph W. Hart and J. Carl Russell.
} Civil Action No. 2299.

MOTION OF THE DEFENDANTS—FILED AUG. 24, 1965.

Come the defendants, Joseph W. Hart and J. Carl Russell, by their attorney Fyke Farmer, and respectfully show to the Court that they are unable to pay the judgment rendered against them in favor of the United States of America but have brought an action against the Federal Reserve Bank of Atlanta in this Court the style of which is **Joseph W. Hart, Luella F. Hart and J. Carl Russell v. Federal Reserve Bank of Atlanta, Civil No. 3337,** asserting a cause of action against the Federal Reserve Bank of Atlanta as regards which the United States of America has a joint interest with them in recovering from Federal Reserve Bank of Atlanta the loss sustained as the result of the unauthorized and wrongful acts of the Federal Reserve Bank of Atlanta in releasing the security for the note on which the United States of America recovered the judgment against them in this case and should, therefore, join with the plaintiffs

in said **Case No. 3337** on the same side as the plaintiffs against the Federal Reserve Bank of Atlanta and by so doing render unavailable to the defendant Federal Reserve Bank of Atlanta the defenses of *res adjudicata* laches and the statute of limitations and governmental immunity; and the defendants move the Court to take judicial notice of the entire proceedings in said **Case No. 3337** and enter an order herein requiring the United States of America to show cause why it should not join as plaintiff in said **Cause No. 3337** or be forever barred from collecting, or attempting to collect, the judgment against the defendants in this cause.

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Attorney for Defendants.

In the

District Court of the United States
for the Middle District of Tennessee,
Nashville Division.

Joseph W. Hart, Luella F. Hart and J. Carl Russell,

v.

Federal Reserve Bank of Atlanta.

Civil No. 3337.

MEMORANDUM—FILED JAN. 13, 1966.

This case is before the Court on a motion for summary judgment by defendant, Federal Reserve Bank of Atlanta. The specific points raised and pleaded in the motion are that (1) plaintiff, Luella F. Hart, is not a proper party plaintiff; (2) the questions now presented have been previously decided and that this action is therefore barred under the doctrine of res judicata; (3) the action is barred by laches and the statute of limitations; and (4)

the action will not lie because of the doctrine of sovereign immunity.

In 1943, in order to finance a development known as Country Club Village Subdivision, Country Club Village Corporation executed a promissory note to the First National Bank of Birmingham for $2,200,000. Plaintiffs, Hart and Russell, the principal stockholders of the Corporation, signed the note as guarantors. Plaintiffs executed an agreement dated April 6, 1944 which required them to deposit the capital stock of the Corporation. In addition, the Corporation executed and pledged an additional note for $2,200,000 payable on demand, this note being secured by real estate and chattel mortgages covering all its properties. Pursuant to these financial arrangements, Country Club Village Corporation completed construction of the development.

Plaintiffs allege that the two banks, using the power of the pledge, forced them to sign the agreement of April 6, 1944. They further allege that they were induced to sign the agreement by representations that if they did sign and did turn over the stock of the Village Corporation, they would not have to honor their guaranty of the Village Corporation's indebtedness.

The 1944 Agreement provided that stock of the Country Club Village Corporation would be conveyed to the banks who would hold it free and clear of all claims of Hart, his wife, Mrs. Luella Hart, and Russell. Qualifying shares were given to Hart and Russell who were to act as managers of the Country Club Village corporation. It was further provided that although the liabilities of the Country Club Village Corporation exceeded its assets, Hart and Russell were to have the right to redeem the stock by payment of the indebtedness within one year. At the same time, the banks were given the power to accept an offer to buy the Corporation. In accepting any offer within

the one year period, however, it was provided that the banks were to exercise their best judgment and discretion. Furthermore, before accepting any offer, the banks were to submit written notice to Hart and Russell. The power to sell i. e., accept an offer, was limited to one year from the date of the Agreement at which time Hart and Russell were to have no further rights in the stock of the Country Club Village Corporation or any successor corporation.

Subsequent to the 1944 Agreement, the banks organized the Country Club Realty Corporation by issuing the capital stock of that corporation, except for qualifying shares for Hart and Russell, to the Country Club Village Corporation. The Village Corporation then transferred its property to the Realty Corporation and the banks released the real and chattel mortgages which they held as collateral against the Village Corporation's indebtedness. The Banks then obtained from the Realty Corporation an agreement to execute new mortgages on demand subject only to F. H. A. insured first mortgages to be placed on the individual homes.

F. H. A. Mortgages, totaling over $2,000,000, were placed on the homes and the net proceeds were received by the banks and applied to the Village Corporation's indebtedness. A deficit of $183,345.55 remained. The banks demanded payment for 90% of this deficit, and the Federal Reserve Bank of Atlanta, fiscal agent of the United States, made the payment pursuant to its guaranty agreement made some time in October, 1944.

Plaintiffs then allege that in the course of the year following the agreement of April 6, 1944, the defendant prevented any sales of homes within the Subdivision. It is further asserted that the banks refused several offers for the Subdivision as a whole. At the expiration of the one

year period specified in the April 6, 1944 Agreement the defendant and the two banks sold the Subdivision to Ellinor for $37,140.00. The Subdivision was then conveyed by the Realty Corporation to Spring Hill Homes, Inc., the corporation designated by Ellinor to take title to the Subdivision. The banks then assigned the principal note to the defendant, Federal Reserve Bank, together with the capital stock of the Village Corporation and all interests in collateral.

Subsequently, on or about December 22, 1945, the defendant, pursuant to an agreement made before the sale, released the Realty Corporation of its obligation to execute a mortgage covering the Subdivision as provided by the agreement dated January 16, 1945, a mortgage which was to have secured the balance of the Village Corporation's indebtedness. Then, on September 9, 1946, the defendant assigned the $2,200,000 note executed by the Village Corporation and secured by the capital stock of both the Village Corporation and the Realty Corporation to the United States.

A suit was then instituted by the United States against Hart and Russell as guarantors for the $2,200,000 note, resulting in a judgment against Hart and Russell for $119,850.56, of which $83,900.63 constituted the balance of the principal on the note. United States v. Hart et al., 215 F. Supp. 35 (M. D. Tenn. 1962), affirmed 312 F. 2d 127 (6th Cir. 1963).

While the claims and causes of action in this and the prior action are different, the Court is nevertheless of the opinion that the plaintiffs' action is barred by collateral estoppel, which is an aspect of the doctrine of res judicata. This doctrine operates to preclude relitigation between the

same parties[1] of issues which were actually adjudicated and determined in a prior action, even though the causes of actions in the two suits are not the same. This distinction is clearly brought out in the discussion of res judicata in 1B Moore's Fed. Practice, Sec. 0.405, p. 621:

> The term res judicata is often used to denote two things in respect to the effect of a valid, final judgment; (1) that such a judgment, when rendered on the merits, is an absolute bar to a subsequent action, between the same parties or those in privity with them, upon the same claim or demand; and (2) that such a judgment constitutes an estoppel, between the same parties or those in privity with them, as to matters that were necessarily litigated and determined although the claim or demand in the subsequent action is different. Under the first proposition the judgment operates as a bar—prevents relitigation of all grounds for, or defenses to, recovery that were then available to the parties before the particular court rendering the judgment, in relation to the same claim—regardless of whether all grounds for recovery or defenses were judicially determined. Under the second proposition the judgment prevents the parties from relitigating only those matters that were determined.
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> While both propositions have the same general objective—judicial finality, the operational difference between them is at times crucial. For clarity we shall use the term res judicata as embracing only the first proposition, and the term collateral estoppel as

[1] Here the parties are the same since the Federal Reserve Bank was acting merely as the fiscal agent of the United States. Mrs. Hart's presence in this action may be disregarded since it is shown that she had no interest in the Country Club Village Corporation except as the holder of one share of stock to qualify her as a member of its board of directors. Even this share was surrendered under the agreement of April 6, 1944.

embracing the second proposition. "The basic distinction," said Chief Justice Warren in Lawlor v. National Screen Service Corp.,

> "between the doctrines of res judicata and collateral estoppel as those terms are used in this case, has frequently been emphasized. Thus, under the doctrine of res judicata, a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, such a judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit."

An analysis of the complaint in the present case discloses that the plaintiffs seek to recover from the Federal Reserve Bank an amount representing the difference between the value of the Country Club Village Corporation stock and the amount realized from the sale of the subdivision real estate upon the general theory that the Federal Reserve Bank, acting as fiscal agent for the United States, mismanaged the collateral security and by its conduct caused such security to be sacrificed to the plaintiffs' prejudice. Specifically, it is alleged:

(1) That the Federal Reserve Bank participated in the sale to Ellinor or Spring Hill Homes, Inc., of the subdivision property at a "wanton sacrifice."

(2) That the plaintiffs were induced by representations and assurances made by the banks and by the Federal Reserve Bank that the plaintiffs would never be called upon to make good their guaranty and endorsements to enter into and sign the agreement of April 6, 1944.

(3) That no notice was given to the plaintiffs at the time of the sale of said property to Ellinor or to Spring Hill Homes, Inc., as required by the agreement of April 6, 1944, and by the provisions of the Alabama statute.

(4) That the agreement of April 6, 1944, authorizing transfer of the Country Club Village Corporation stock to the banks was contrary to the provisions of Alabama law and therefore void.

(5) That the Federal Reserve Bank by the agreement of December 22, 1945, wrongfully released the obligation of the Country Club Realty Corporation to execute a mortgage on the property.

(6) That the Federal Reserve Bank during the one year period specified and provided for in the agreement of April 6, 1944, "prevented any sales of the individual houses from being made to home owners."

It is clear that the question as to whether the property was sold at a sacrifice was actually adjudicated adversely to the plaintiffs in the prior litigation.[2] It was specifically found both by this Court and the Court of Appeals that the price, $37,140.00, was fair and adequate and that the sale was made in good faith. Consequently, this issue cannot be re-examined in the present case as the basis for a claim by the plaintiffs against the Federal Reserve Bank, acting merely in the capacity of a fiscal agent for the United States.

It is equally clear that the Court determined in the prior litigation that the agreement of April 6, 1944, was made and entered into by the plaintiffs freely and voluntarily and that its execution was not induced by the

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[2] United States v. Joseph W. Hart and J. Carl Russell, Civil Action No. 2299, M. D. of Tenn., Findings of Fact and Conclusions of Law; Supplemental Memorandum, 215 F. Supp. 35; Opinion Court of Appeals, 312 F. 2d 127.

alleged representations or assurances of other parties. This issue is also precluded by collateral estoppel.

The notice question under the agreement of April 6, 1944, was also litigated in the prior action, although the applicability of the Alabama statute requiring the notice be given to stockholders before the sale of all corporate assets was not specifically discussed at the trial stage of the proceeding, or in the opinion of the Court of Appeals. The Alabama statute, however, was cited and relied upon in the Court of Appeals by the appellants, the Government taking the position that the Alabama statute was without application because federal law rather than state law controlled. The Court of Appeals found that the only issue deserving of discussion was the question of the value of the property sold, with the result that it indulged in no discussion of the notice issue or the applicability of the notice requirement of the Alabama statute. It is apparent, however, that the question of notice was actually raised and that it was adjudicated adversely to the plaintiffs, since the Court of Appeals expressly found that "other questions raised by appellants are considered to be without merit." 312 F. 2d 130. In addition, it should be added that the plaintiffs' contention is in any event without merit. The sale was not made until the expiration of the one year period provided for in the agreement of April 6, 1944, and consequently, under the terms of the agreement, no notice was required to be given to the plaintiffs. As to statutory notice to stockholders in the case of a corporation selling all of its assets, the plaintiffs at the time of the sale were no longer stockholders of Country Club Village Corporation, their rights of ownership having been divested by the agreement of April 6, 1944, and transferred to the Banks. Hence, they were not entitled to receive notice of the sale of corporate assets.

The contention was made in the prior action that the agreement of April 6, 1944, was void under Alabama law

because it provided for a one year redemption period rather than a period of two years. This issue was also determined and adjudicated adversely to the present plaintiffs since their defenses were disallowed and the Court of Appeals, as pointed out, found all contentions of Hart and Russell in opposition to the Government's claim "to be without merit."

That the Federal Reserve Bank may have executed a release of the obligations of the Country Club Realty Corporation to execute a mortgage on the property was specifically determined to be immaterial in the prior litigation, this Court pointing out that the property had already been contracted to be sold for $37,140 and that the release of the obligation was necessary to pass a good title to the purchaser, Spring Hill Homes, Inc. United States v. Hart, et al., 215 F. Supp. 35, 36.

The allegation that the Federal Reserve Bank prevented sales to individual home owners during the one year period provided for in the agreement of April 6, 1944, because of its vagueness and generality, is insufficient to state a claim against the Federal Reserve Bank which would not be precluded under the doctrine of sovereign immunity. Since the Reserve Bank was merely a fiscal agent of the War Department under the First War Powers Act of 1941, it would be clothed with the immunity of the sovereign in carrying out its proper functions in complying with its statutory obligation as an insurer of 90% of the Hart and Russell indebtedness, and in receiving and enforcing all rights to collateral security after payment. During the one year period under the agreement of April 6, 1944, the indebtedness was in default, and except for the one year moratorium so provided, the property could have been sold immediately. It is clear from the agreement that a broad discretion is vested in the banks (assignors of Federal Reserve) with reference to enforcement

of collateral and as to questions of sale and foreclosure, and the allegation that Federal Reserve during this period prevented sales to individual home owners, standing alone, and in the context of the facts as they existed, amounts to nothing more than a decision made by the Bank, in the proper exercise of its discretion, not to continue after default in liquidating collateral to sell lots separately but to sell all of the remaining real estate as a whole. If the allegation was intended to infer that full value was not realized from the real estate, the issue was settled against plaintiffs by the direct finding to the contrary in the former suit.

An order will accordingly be submitted to the Court allowing the plaintiffs to amend their complaint as set forth in motion filed August 24, 1965, otherwise disallowing said motion, sustaining the defendant's motion for summary judgment and dismissing the plaintiffs' action, taxing the costs to the plaintiffs, and reciting that the disposition of the action upon summary judgment is based upon the pleadings and exhibits in this action and upon the entire record in the case of United States v. Joseph W. Hart and J. Carl Russell, Civil Action No. 2299, in the Nashville Division of this court, of which the Court takes judicial notice.

William E. Miller,
United States District Judge.

In the
United States District Court
For the Middle District of Tennessee,
Nashville Division.

Joseph W. Hart, Luella F. Hart and J. Carl Russell,

v.

Federal Reserve Bank of Atlanta.

Civil Action. No. 3337.

ORDER—FILED JAN. 21, 1966.

It appearing that the Court has entered its memorandum decision entered January 13, 1966, and said memorandum opinion is incorporated by reference in this order.

It Is Further Ordered, Adjudged and Decreed that the motion on behalf of the plaintiffs filed on the 24th day of August, 1965, requesting leave to amend paragraph 9 of their complaint by inserting certain words and phrases as set out in part I of said motion is hereby granted and the complaint is amended as requested in part I of said motion.

The remainder of said motion is not well taken for the reasons stated in the memorandum opinion entered January 13, 1966, and is, therefore, overruled.

It further appearing that the motion for summary judgment heretofore filed on October 23, 1963, was sustained by the memorandum opinion entered January 13, 1966.

It Is Ordered that the entire record in the case of United States of America v. Joseph W. Hart and J. Carl Russell, Civil Action No. 2299 in the Nashville Division of this Court, of which the Court takes judicial notice, be filed in and made a part of the record in this cause.

It Is Further Ordered, Adjudged and Decreed that the defendant's motion for summary judgment heretofore

filed on October 23, 1963, is sustained for the reasons stated in the memorandum opinion heretofore entered on January 13, 1966, and

It Is Further Ordered, Adjudged and Decreed that the plaintiffs' action is dismissed and the cost of this cause are taxed against the plaintiffs for which execution may issue.

The action of the Court and the disposition of the defendant's motion for summary judgment is based on the pleadings and exhibits in this cause of action and upon the entire record in case No. 2299.

Enter:

/s/ Wm. E. Miller,
United States District Judge.

Approved for Entry:

James F. Neal,
United States Attorney,
/s/ Kent Sandidge, III,
Kent Sandidge, III,
Assistant U. S. Attorney.

Excerpts From First War Powers Act, 1941—Public Law—Ch. 593—Dec. 18, 1941—55 Stat. 838.

An Act

To expedite the prosecution of the war effort.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Coordination of Executive Bureaus in the Interest of the More Efficient Concentration of the Government.

Section 1. That for the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be published in accordance with the Federal Register Act of 1935: Provided, That the termination of this title shall not affect any act done or any right or obligation accruing or accrued pursuant to this title and during the time that this title is in force: Provided further, That the authority by this title granted shall be exercised only in matters relating to the conduct of the present war: Provided further, That no redistribution of functions shall provide for the transfer, consolidation, or abolition of the whole or any part of the General Accounting Office or of all or any part of its functions.

Sec. 2. That in carrying out the purposes of this title the President is authorized to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, governmental corporations, offices, or officers now existing by law, to transfer any duties or

powers from one existing department, commission, bureau, agency, governmental corporation, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto.

Sec. 3. That for the purpose of carrying out the provisions of this title, any moneys, heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, governmental corporation, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said functions, except to the extent hereafter authorized by the Congress in appropriation Acts or otherwise.

Sec. 4. That should the President, in redistributing the functions among the executive agencies as provided in this title, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper.

Sec. 5. That all laws or parts of laws conflicting with the provisions of this title are to the extent of such conflict suspended while this title is in force.

Upon the termination of this title all executive or administrative agencies, governmental corporations, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this title to the contrary notwithstanding.

Title II—Contracts.

Sec. 201. The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war: Provided, That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting: Provided further, That nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits: Provided further, That all acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

Excerpts From Executive Order No. 9070.

Consolidating the Housing Agencies and Functions of the Government Into the National Housing Agency.

By virtue of the authority vested in me by Title I of the First War Powers Act, 1941, approved December 18, 1941 (Public Law 354, 77th Congress),[14] and as President of the United States, it is hereby ordered as follows:

1. The following agencies, functions, duties, and powers are consolidated into a National Housing Agency and shall be administered as hereinafter provided under the direction and supervision of a National Housing Administrator:

(a) The Federal Housing Administration and its functions, powers, and duties, including those of the Administrator thereof.

(b) All functions, powers, and duties of the Federal Home Loan Bank Board and of its members.

(c) The Home Owners Loan Corporation and the functions, powers, and duties of its Board of Directors.

(d) The Federal Savings and Loan Insurance Corporation and the functions, powers, and duties of its Board of Trustees.

(e) The United States Housing Authority and its functions, powers, and duties, including those of the Administrator thereof.

(f) All functions, powers, and duties relating to defense housing of (1) the Federal Works Administrator under the act of October 14, 1940, entitled "An Act to expedite the provision of housing in connection with national defense, and for other purposes," as amended,[15] and under acts making appropriations to carry out the purposes of said act, (2) the War Department and the Navy Department with respect to housing units for persons (with families) engaged in national defense activities (except housing units located on military or naval reservations, posts, or bases) under Title IV of the Naval Appropriation Act for the fiscal year 1941,[16] and (3) any agencies heretofore designated (including the Federal Works Agency and the Farm Security Administration) to provide temporary shelter in defense areas under the Urgent Deficiency Appropriation Act, 1941,[17] and the Additional Urgent Deficiency Appropriation Act, 1941,[18] and the Third Supplemental National Defense Appropriation Act, 1942.[19]

(g) All functions, powers, and duties of the Farm Security Administration relating to such housing projects as such Administration determines are for families not de-

riving their principal income from operating or working upon a farm.

(h) The Defense Homes Corporation and its functions, powers, and duties, including those of its officers and Board of Directors.

(i) All functions, powers, and duties of the Federal Loan Administrator, the Federal Works Administrator, and the head of any department or other agency relating to the administration or supervision of the agencies, functions, powers, and duties transferred hereunder.

(j) All functions, powers, and duties of the Division of Defense Housing Coordination established by Executive Order No. 8632 of January 11, 1941, and of the Coordinator of Defense Housing: Provided, That such Division and such Coordinator shall continue to exercise such functions, powers, and duties until the appointment or designation of the National Housing Administrator.

(k) All powers, rights, privileges, duties, and functions transferred to the Federal Works Administrator by Executive Order No. 8186 of June 29, 1939:

* * * * * * *

15. All unexpended balances of appropriations, authorizations, allocations, or other funds transferred under this order shall be used only for the respective purposes and in the administration of the respective functions for which such funds were made available.

16. Transfers of available funds under this order shall include funds available for the fiscal year ending June 30, 1943.

17. This order shall become effective as of the date hereof and shall be in force and effect so long as Title I of the First War Powers Act, 1941, remains in force.

Franklin D. Roosevelt.

The White House,
February 24, 1942.

Excerpts From Executive Order No. 9112.

Authorizing Financing Contracts to Facilitate the Prosecution of the War.

Whereas in order that contracts of the War Department, the Navy Department, and the United States Maritime Commission (hereinafter referred to as Maritime Commission) which are now outstanding or may hereafter be entered into for war production, including the obtaining or conversion of facilities, may be promptly and effectively performed, it is essential that additional facilities be provided through governmental agencies to supply necessary funds to contractors, subcontractors and others engaged in such war production pursuant to such contracts;

Whereas the War Department, the Navy Department, and the Maritime Commission have available to them amounts appropriated by Congress which may be used for the purpose of making or guaranteeing loans, discounts or advances or commitments in connection therewith for the purpose of financing contractors, subcontractors and others engaged in such production or otherwise to expedite war production;

Whereas the guaranteeing or making of such loans, discounts, advances and commitments by the War Department, Navy Department and Maritime Commission will be expedited and facilitated by utilizing in this connection the Federal Reserve Banks and the Board of Governors of the Federal Reserve System, which are agencies of the Government exercising functions in connection with the prosecution of the war effort and which have offices and other facilities, including experienced personnel, located conveniently throughout the country and are in close and frequent contact with banking and other financing institutions; and

Whereas the guaranteeing or making of such loans, discounts, advances and commitments will greatly facilitate the participation of small business enterprises in war production;

Now, therefore, by virtue of the authority vested in me by the various provisions of the First War Powers Act, 1941, approved December 18, 1941,[25] by all other Acts of Congress and by the Constitution of the United States, and as President of the United States and Commander-in-Chief of the Army and Navy of the United States, and deeming that such action will facilitate the prosecution of the war, I do hereby order as follows:

(1) The War Department, Navy Department and the Maritime Commission are hereby respectively authorized, without regard to the provisions of law relating to the making, performance, amendment or modification of contracts, (a) to enter into contracts with any Federal Reserve Bank, the Reconstruction Finance Corporation, or with any other financing institution guaranteeing such Reserve Bank, Reconstruction Finance Corporation, or other financing institution against loss of principal or interest on loans, discounts or advances, or on commitments in connection therewith, which may be made by such Reserve Bank, Reconstruction Finance Corporation, or other financing institution for the purpose of financing any contractor, subcontractor or others engaged in any business or operation which is deemed by the War Department, Navy Department or Maritime Commission to be necessary, appropriate or convenient for the prosecution of the war, and to pay out funds in accordance with the terms of any such contract so entered into; and (b) to enter into contracts to make, or to participate with any Federal Reserve Bank, the Reconstruction Finance Corporation, or other financing institution in making loans, discounts or advances, or commitments in connection therewith, for the

purpose of financing any contractor, subcontractor or others engaged in any business or operation which is deemed by the War Department, Navy Department or Maritime Commission to be necessary, appropriate or convenient for the prosecution of the war, and to pay out funds in accordance with the terms of any such contract so entered into.

(2) The authority above conferred may be exercised by the Secretary of War, the Secretary of the Navy or the Maritime Commission respectively or may also be exercised in their discretion and by their direction respectively, through any other officer or officers or civilian officials of the War and Navy Departments or the Maritime Commission. The Secretary of War, the Secretary of the Navy, and the Maritime Commission may confer upon any officer or officers in their respective departments or civilian officials thereof the power to make further delegations of such powers within the War and Navy Departments and the Maritime Commission.

(3) Any Federal Reserve Bank or any officer thereof may be utilized, and is hereby authorized to act, as agent of the War Department, the Navy Department, or the Maritime Commission, respectively, in carrying out any of the provisions of this executive order, and the Secretary of the Treasury is hereby directed to designate each Federal Reserve Bank to act as fiscal agent of the United States pursuant to the provisions of section 15 of the Federal Reserve Act in carrying out any authority granted to it by or pursuant to this executive order. In any case in which any Federal Reserve Bank shall make or participate in making any loan, discount or advance or commitment as agent of the War Department, Navy Department or Maritime Commission under authority of this order, all such funds as may be necessary therefor shall be supplied and disbursed by or under authority from the War De-

partment, Navy Department or Maritime Commission in accordance with such procedure as they may respectively require. Any amounts now or hereafter available under any appropriation act to the War Department, the Navy Department, or the Maritime Commission for the purpose of procuring materials, equipment or supplies, or of expediting production thereof, may be expended through the agency of the respective Federal Reserve Banks in accordance with the provisions of this executive order. In taking any action under any designation or authority given by or pursuant to this paragraph no Federal Reserve Bank shall have any responsibility or accountability except as agent of the War Department, Navy Department or Maritime Commission as the case may be.

(4) All actions and operations of any Federal Reserve Bank under authority of or pursuant to the terms of this executive order shall be subject to the supervision of the Board of Governors of the Federal Reserve System and to such directions and conditions as the Board of Governors of the Federal Reserve System and to such directions and conditions as the Board of Governors of the Federal Reserve System may prescribe, by regulation or otherwise, after consultation with the Secretary of War, the Secretary of the Navy, or the Maritime Commission, or their authorized representatives.

(5) The War Department, the Navy Department and the Maritime Commission shall make reports of all contracts entered into by them respectively pursuant to the terms of this executive order, in accordance with the provisions of paragraph 1 of the regulations prescribed in Title II of Executive Order No. 9001 dated December 27, 1941.

(6) Interest, fees and other charges derived by the War Department, Navy Department and Maritime Commission, respectively, from operations pursuant to the terms of this executive order may be held by the Federal Reserve

Banks and shall first be used for the purpose of meeting expenses and losses (including but not limited to attorneys' fees and expenses of litigation) incurred by the Federal Reserve Banks in acting as agents under or pursuant to the provisions of this executive order; and to the extent that the amount of such interest, fees or other charges is insufficient for this purpose the Federal Reserve Banks shall be reimbursed for such expenses and losses by the War Department, the Navy Department or the Maritime Commission, as the case may be.

Franklin D. Roosevelt.

The White House,
March 26, 1942.

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Excerpt From National Housing Act Amendment—77th Cong., 2d Sess.—Ch. 319—May 26, 1942—56 Stat. 301.

Sec. 11. Title VI of the National Housing Act, as amended, is hereby further amended by adding the following new section at the end thereof:

"Sec. 608. (a) In addition to mortgages insured under section 603 of this title, the Administrator is authorized to insure mortgages as defined in section 601 of this title (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided.

"(b) To be eligible for insurance under this section a mortgage shall meet the following conditions:

"(1) The mortgaged property shall be held by a mortgagor approved by the Administrator. The Administrator may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The

Administrator may make such contracts with, and acquire for not to exceed $100 stock or interest in any such mortgagor, as the Administrator may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the War Housing Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Administrator under the insurance.

"(2) The mortgaged property shall be designed for rent for residential use by war workers.

"(3) The mortgage shall involve a principal obligation in an amount—

"(A) not to exceed $5,000,000; and

"(B) not to exceed 90 per centum of the amount which the Administrator estimates will be the reasonable replacement cost of the completed property or project, including the land; the proposed physical improvements; utilities within the boundaries of the property or project; architects' fees; taxes and interest accruing during construction; and other miscellaneous charges incidental to construction and approved by the Administrator; Provided, That such mortgage shall not in any event exceed the amount which the Administrator estimates will be the cost of the completed physical improvements on the property or project, exclusive of off-site public utilities and streets, and organization and legal expenses; and

"(C) not to exceed $1,350 per room for such part of such property or project as may be attributable to dwelling use.

The mortgage shall provide for complete amortization by periodic payment within such term as the Administrator shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4½

per centum per annum on the amount of the principal obligation outstanding at any time. The Administrator may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

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Excerpt From Mobilization of Small Business Act—77th Cong., 2d Sess.—Ch. 404—June 11, 1942—56 Stat. 351, 355.

Sec. 7. The War Department, the Navy Department, and the Maritime Commission are hereby authorized to make or participate in loans, guaranties, and commitments in accordance with Executive Order Numbered 9112 of March 26, 1942, and to participate in or to guarantee any loans made pursuant to this Act with a view to increasing the production of war materials, supplies, or equipment; and in connection therewith they may use any funds heretofore or hereafter made available to them for purposes of procuring war materials, supplies, and equipment, or of expediting the production thereof.